TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~982.~~ 646

WILLIAM M. FARRINGTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF TENNESSEE AND THE COUNTY OF SHELBY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED FEBRUARY 3, 1877.

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1 THE STATE OF TENNESSEE:

Pleas before the supreme court of the State of Tennessee, for the western division thereof, at Jackson, on the fourth Monday of September, A. D. 1876.

Present: Hon. James W. Deaderick, chief-justice, Peter Turney, Robert McFarland, Thomas J. Freeman, and John L. T. Sneed, judges.

Be it remembered that heretofore, to wit, on the 5th day of April, A. D. 1873, the following transcript of a record was filed in the office of the clerk of the supreme court of said State, at Jackson, to wit:

STATE OF TENNESSEE & COUNTY OF SHELBY *vs.* W. M. FARRINGTON.	212 Shelby chancery docket.

2 STATE OF TENNESSEE:

Transcript from second chancery court of Shelby County, in case of State of Tennessee & County of Shelby vs. W. M. Farrington & als.

Cost-bond.—Filed 28th day of March, 1873.

We, the County of Shelby and surety, and Wm. M. Farrington & surety, acknowledge ourselves indebted to the State of Tennessee in the sum of two hundred and fifty dollars. To be void if the said County of Shelby, complainant, and Wm. M. Farrington et al., defendants, in a case upon an agreed state of facts to be determined by the chancellor, which has this day been filed in the second chancery court of Shelby
3 County, shall pay all such costs as may be awarded against them by the court in its decrees and orders in said bill.

This 27' day of March, 1873.

W. M. FARRINGTON. [SEAL.]
By L. D. McKISSICK.
L. D. McKISSICK, [SEAL.]
Surety.

Agreed case.

THE STATE OF TENNESSEE AND SHELBY County *vs.* WM. M. FARRINGTON, STOCKHOLDER IN THE Union & Planters' Bank.	Submitted on agreed state of facts.

It is agreed that the Union and Planters' Bank of Memphis was duly organized under its charter granted by the legislature of Tenn. on the 20th day of March, 1858, and 12th of February, 1869. That it is
4 now, and has been since its organization, doing a regular banking business in conformity to the 21st section of the act of 1869, under which it organized. That its business sites and location is in the city of Memphis, Shelby County, Tennessee.

That its capital stock regularly subscribed and paid up amounts to $675,000.00, divided into shares of $100.00, making 6,750 shares. That the above-named defendant, Wm. M. Farrington, was throughout the year 1872 the owner of 150 shares of said capital stock, of the value of $15,000.00.

That the State of Tennessee and County of Shelby, claiming the right under the existing revenue laws to tax said stock, caused the same to be assessed against the said Wm. M. Farrington for 1872 at the value
5 aforesaid, the State imposing thereon a tax of 40 cents on the $100.00, making a State tax of sixty dollars, and the County of Shelby imposing a tax of $1.20 on the $100.00, making a county tax of $180.00 on said 150 shares, which taxes the State and county now demand payment of from said Farrington. The said Wm. M. Farrington disputes the legality of said tax and denies the right of the State and County to assess said shares of stock for taxation against him, and claims that under the 10th section of the charter of the Union & Planters' Bank, which is as follows, to wit: "That said company shall pay to the State an annual tax of one-half of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other taxes," said
6 shares of stock so owned by him are exempt from taxation except the aforesaid bonus or tax to the State of one-half of one per cent. on each share of capital stock, which it is admitted has been regularly paid to the State. And the said Wm. M. Farrington claims that all laws imposing other or additional taxes on said shares of capital stock, impairs the obligation of the contract between the State of Tennessee and the corporators of the Union & Planters' Bank, contained in said 10th section of its charter as above set forth, and that any and all laws attempting to impose any other or additional tax on said capital shares of stock are contrary to, and in violation of, the Con-
7 stitution of the United States of America, and are therefore void. It is agreed that the charter of the Union & Planters' Bank of Memphis is a part of this case, and that all other laws applicable to the subject may be read on the trial or hearing of the case from any books containing the same as if they were copied herein. It is agreed that the second chancery court of Shelby County may try this case, and shall decide whether the State of Tennessee and Shelby County have the legal right to impose said tax so assessed and demanded on said shares of capital stock, in addition to the said tax to the State of one-half of one per cent. on each share of the capital
8 stock, as provided in the said 10th section of the bank's charter, above quoted. It is agreed that if the decision shall be in favor of the State and county, judgment shall be rendered against said Wm. M. Farrington for the aforesaid sums of $60.00 and $180.00 in favor of the State and county respectively, with interest from the 1st day of January, 1873. On the other hand, if the decision shall be in favor of defendant Farrington, then the judgment shall be that said taxes are illegally assessed; that said shares of stock are exempt from all other taxation except the aforesaid one-half of one per cent. to the State of Tennessee, as provided in the 10th section of the bank's charter; and further, that the
9 collection of said taxes be enjoined, and such other appr'iate decree as the court may deem proper to render in order to protect said Farrington and his assigns from taxation on said stock. Each party has the right, and reserves it, to appeal or prosecute a writ of error to the court of final resort having jurisdiction, upon executing a bond for cost or upon executing such bond as the court may order. Pending the final decision of this case and the questions involved, the State and County of Shelby agree to suspend the collection of said taxes from said Farrington, and also like taxes assessed against other

10 stockholders in the said Union and Planters' Bank of Memphis. The costs of the suit to abide the final result.

WM. M. FARRINGTON,
By McKISSICK & TURLEY,
His Solicitors.
W. W. McDOWELL,
County Attorney.

STATE OF TENNESSEE,
County of Shelby:

Personally appeared before me, L. D. McKissick, one of the above-named solicitors for defendant Wm. M. Farrington; * * * * * that the questions and controversy involved in the above case are real, and that this proceeding is had in good faith, and that this proceeding is in good faith to determine the rights of the parties.

L. D. McKISSICK.

11 Subscribed and sworn to before me March 27th, 1873.

M. D. L. STEWART, *C. & M.*,
By C. BELCHER, *D. C. & M.*

Filed 28 day of March, 1873.

M. D. L. STEWART, *C. & M.*

Decree and appeal.

On, to wit, March 27, '73, Hon. Sam'l P. Walker, chancellor presiding, the following proceedings were had, to wit:

STATE OF TENNESSEE AND COUNTY OF SHELBY,
vs.
WILLIAM M. FARRINGTON.

This cause came on to be heard before the Hon. Sam'l P. Walker, chancellor, upon the agreed case and agreement of counsel, and it appearing to the court that the defendant is a stockholder in the
12 Union and Planters' Bank of Memphis, a corporation organized under and by virtue of the laws of Tennessee incorporating said bank, the 10th section of the charter providing the said bank shall pay to the State an annual tax of one-half of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other taxes, and it further appearing that the revenue act of 1870 provides that all shares of any bank shall be subject to taxation, and that under this law the State of Tennessee and the County of Shelby levied the tax mentioned in the agreed case, and assessed the same upon the shares of the defendant as therein set forth, and have demanded the payment of the same from the defendant, the court is of the
13 opinion that the said tax is illegal, the law under which the same was levied, assessed, and demanded, being in effect to impair the obligation of the contract contained in said 10th section of the bank's charter, and the other foresaid revenue act is contrary to and in violation of the Constitution of the United States. It is therefore ordered, adjudged, and decreed and declared by the court that the tax mentioned in the agreed case so levied, assessed, and demanded by the State and County of Shelby, as mentioned and agreed in the case, is illegal and void. And it is further ordered, adjudged,

and decreed by the court that the State of Tennessee and the County of Shelby, their tax-collector and other officers and agents, be and
14 they are hereby enjoined from collecting or proceeding to collect the said tax from the said defendant. It is further ordered, adjudged, and decreed by the court that the State of Tennessee and the County of Shelby each pay one-half the costs of this cause to certified according to law.

From all of which the State and County of Shelby pray an appeal to the next term of the supreme court, which is granted upon the execution of a bond for cost according to law.

Appeal-bond.

We, Shelby County and W. W. McDowell, sec'ty, acknowledge ourselves indebted to W. M. Farrington and others in the sum of two hundred and fifty dollars, to be void if the said Shelby County, who
15 has prayed for and obtained an appeal from a decree of the second chancery court of Shelby County, in a cause in which the State of Tennessee and Shelby County are complainants, and defendant, to the next term of the supreme court of Tennessee for the district of West Tennessee, to be held at Jackson, Madison County, on the first Monday in April next, shall pay and satisfy all such costs as shall be awarded against County by said supreme court.

COUNTY OF SHELBY. [SEAL.]
W. W. McDOWELL. [SEAL.]

(Endorsed:) Filed 2 day of April, 1873. M. D. L. Stewart, C. & M.

And at the September term, A. D. 1876, of the supreme court
16 of Tennessee, for the western division thereof, at Jackson, the following opinion was delivered:

Opinion.

CITY OF MEMPHIS
vs.
WM. M. FARRINGTON ET AL.

STATE OF TENNESSEE
vs.
M. J. WICKS ET AL.

THE CITY OF MEMPHIS
vs.
C. S. FENNER & BLUFF CITY INS. CO., & other corporations & stockholders in said corporations.

An opinion was delivered at last term in the cases referred to above, but the court not being satisfied with the conclusion then reached, held them up for further consideration and review of the questions involved.
17 We have had laid before us additional arguments by counsel of more than ordinary ability and learning, to which we have given attention. We now proceed to give our conclusions upon this re-investigation of the questions involved. By the revenue act of 1869, sect. , it is enacted that no tax shall be hereafter assessed upon the capital of bank or banking association or any other joint-stock company organized under the authority of the State or of the United States; but the stock-

holders in such banks and banking associations or other corporations shall be assessed or taxed upon the value of their shares of stock therein.

The act of 1869–'70, ch. 81, sect. 1, provides "That all shares of
18 stock in any bank, corporation, or company now or hereafter incorporated by or in pursuance to any law of this State or any other State, and all public bonds or stocks except United States bonds, which by the laws of the United States are expressly exempt from taxation, shall be valued and assessed and subject to taxation."

Under the provisions of the above sections the State, the county of Shelby, and city of Memphis claim the right to tax the shares of stock owned by the stockholders in the various banks and other incorporated companies parties to these suits. The right to impose and collect these taxes is resisted by the stockholders under certain
19 clauses in their charters giving exemption from taxes except as therein specified; that these exemptions are contracts, and that to enforce the taxes thus imposed is to impair the obligation of these contracts, in violation of art. 1, sect. 10, of the Constitution of the United States.

The clauses of the charters relied on may be divided into two classes, the first having a clause substantially as in the Hernando Insurance Co. as follows: "Said institution shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes." In some of the charters it is on all "capital stock paid in," in others on capital stock subscribed. This
20 variation in the language is perhaps unimportant in the decision of the questions made. The other class of charters have clauses substantially as in the Merchants' Insurance Co., "that a bonus to the State of one-half of one per cent. upon their capital stock be paid for the use of common schools in the State of Tennessee." In this class there are no words of exemption, as found in the first, so that the question in reference to them is the effect of the agreement to pay the bonus of one-half of one per cent. on the power of the State to impose a tax on the shares of stock held by individuals in said companies upon their value. This class was disposed of at previous term of the court
21 and need not be noticed. The simple question presented in the first class of cases is whether the clauses of the charters, one of which we have cited, exempts the share of stock owned by the stockholder from taxation as property in his hands; in other words, whether this kind of property in the hands of individuals in these particular corporations shall bear its due proportion of the public burdens by being assessed to the owner at its market value, or shall be exempted from these burdens under the operation of the assumed contract contained in the charters of the corporations. It is obvious that the questions
22 presented are of large interest, and likely to be of increased importance to the people of the estate, in proportion as the capital of the country shall seek investment in such corporations as have charters containing such clauses. We have endeavored to give that attention to the investigation of these cases which their importance demands at our hands. What, then, is the legal effect and extent of the clauses in the charters before us in reference to the liability of the shares of stock to be taxed by the State?

What is the true construction and meaning of the clauses of these charters is a question on which we concede that we are bound by the authority of the decisions of the Supreme Court of the United
23 States, inasmuch as on the question of whether the act of the legislature of Tennessee imposing the tax on the shares

of stock impairs the obligation of the contract contained in the charters, our decision may in one event be revised by the Federal Supreme Court. We therefore look to the decisions of that court as furnishing the guide to the conclusion to be reached on the question before us. The leading case on this question, and the one most pressed on our consideration as conclusive in favor of the position of the corporations, is the case of Gordon vs. Appeal Tax Court, (3 How. R., 133.)

That case was substantially this: In 1813 and 1821 certain acts
24 of the legislature of Maryland were passed extending the charters of various banks in the State—the first to 1835, the second to 1845—upon compliance by the banks with certain conditions in the acts mentioned, that is, the building and completion of certain turnpike roads deemed important to the State, and the payment of a certain sum on their capital stock to the treasury of the State. The 11th section of each of the above-mentioned acts of the legislature (the terms of which were accepted by the banks then in existence) contained the following language: "That upon any of the aforesaid banks accepting of and complying with the terms and conditions of this act, the faith of the State is hereby pledged not to impose any
25 further tax or burden upon them during the continuance of their charters under this act." Gordon was the owner of shares of stock in the Union Bank, which had accepted the condition of the acts extending the charters referred to. In 1841 the legislature of the State of Maryland passed a law authorizing the assessment and collection of taxes on all shares of stock in any bank or company incorporated by the State. Gordon resisted the collection of the tax on the bank stock owned by him on the ground that it was exempt from taxation under the 11th section of the acts, as above quoted; that the same was a contract, and to collect the tax was to violate the provision of
26 the Constitution of the United States forbidding any State passing a law impairing the obligation of contracts. The court held, as a matter of fair construction of the 11th section, in connection with the entire history of the propositions to the banks for the extension of their charters, and the acceptance of the terms offered them, with the burdens imposed, that the intention of the legislature was to exempt the stockholders from taxation on account of their stock owned in these banks; that is, that the shares of stock were exempt from taxation under the 11th sect. of the acts we have quoted. From a careful examination of the opinion of the court, however, it clearly appears that this conclusion was not arrived at by
27 fixing this as the definite and certain meaning of the words used, or rather by laying down arbitrarily that such was the necessary meaning of like terms used in all cases, independent of other facts, but was arrived at by taking into view the surrounding and attendant circumstances of the transaction, and from these in connection with the language used as containing what was the intention and purpose of the legislature as expressed in the language of the sections quoted. That the exemption of the shares of stock in the hands of the stockholders was declared in connection with the other facts in the case as a simple matter of construction of this transaction between the State and the banks, we think, is not only clear from the reasoning of the court,
28 but is settled by subsequent construction given to the opinion in this case by Judge Nelson in the case of People vs. Commissioners, (4th Wallace R., 259.) In this case he cites the language of the court in previous case, Van Allen *vs.* The Assessors, (3rd Wall. R., 573,) holding distinctly that the tax on shares of stock is not a tax on the

capital of the bank, and that the shares are "a distinct, independent interest or property held by the shareholder, like any other property that may belong to him," and subject to taxation. The question was, the liability of shares in national banks to taxation, where the capital-
stock was invested in United States bonds, which could
29 not be taxed, so that the court held, as it has uniformly done on the same question, that the capital stock and shares of stock were distinct properties, therefore an exemption of the one did not exempt or include necessarily the other. It was argued in this case that the principle announced was in conflict with the case of Gordon vs. Appeal Tax Court, but the court say this was a mistake. "That case turned upon the construction of an act of Maryland, exempting the bank from taxation on account of a large bonus to the State for the extension of the charter. This court held, and says Judge Nelson, that upon a true construction of the acts of 1813 & 1821, the stockhold-
ers were within the scope of the exemption. He then cites from
30 the Gordon case, as showing the ground of that opinion, the language, "that it appears from the 11th sect. of the acts to have been the intention of the legislature which passed them to exempt the stockholders from taxation as persons on account of the stock which they owned in the banks."

In a late case which has been furnished us, W. B. Minott, jr., vs. Phil. & W. & B. R. R. Co. et als., decided Oct. term, 1873, by the Supreme Court of the United States, opinion by Judge Field, a clause of an act of incorporation, providing that "every company of the class therein designated should, in addition to other taxes, pay to the treasurer of the State for its use one-fourth of one per cent. upon the actual cash value of
every share of its capital stock," was held not to be a tax on the
31 shares of the individual stockholders or upon the property of the corporation, but a tax on the corporation itself, determined by a rule which, though arbitrary, yet approximatively just. In this case the collection of the tax was resisted on the ground that it was a tax on the shares of stock, the owners of which resided in other States, and therefore not subject to be taxed by the State of Delaware; but the court held the tax valid, as not being on the shares but on the corporation, enunciating again the doctrine, with emphasis, that the shares of stock were different and distinct property from the capital stock, the former the individual property of the stockholder, having no local-
32 ity independent of his domicil, the latter the property of the corporation. It being settled, as we think, as the view of the Supreme Court of the United States, as we think most properly, that the capital stock and shares of stock are two distinct properties, and that an exemption of the one does not thereby necessarily exempt the other, nor the taxation of the latter operate as a tax on the former, so as to interfere with its exemption from such burdens, the question before us is whether it was the intention of the legislature, by the clause contained in the charters before us, to exempt both capital stock and the shares of stock from taxation, and whether these stocks are now liable
to be taxed as provided by the legislature. In the Gordon
33 case there are several elements which may fairly distinguish it from the present cases. First, there was a bona-fide and real purchase of the franchise, to wit, the extension of the charters and a real consideration paid for the exemption given. In the language of Judge Wayne: "The legislatures which passed the acts, had in view the construction of the Cumberland & Boonesborough turnpike roads, and the establishment of a school-fund. They designed to accomplish these ob-

jects by making some of the banks construct the roads and all of them contributors to the school-fund, as the price for their charters."

34 The conclusion of the court was, that having thus bought and paid for, or agreed to pay for, the franchise, such a contract was a limitation upon the taxing power of the legislature, forbidding the imposition of any further tax on the franchise thus purchased. The judge distinguishes this from the case of land purchased from the State, by saying, in the one case, the land is bought subject to contribute its portion of the burdens of the State, "but a franchise for banking, when bought, the price is paid for the use of the privilege while it lasts, and any tax upon it would substantially be an addition to the price;" a distinction, we confess, in which the difference is, to say the least of it, not perfectly clear.

35 In the next place these banks were actually existent corporations competent to contract, and in making the contract, the stockholders were required to be, and were actually parties, assenting to the terms, and agreeing to pay for the benefits conferred, and stipulating for the additional benefits, to wit, the exemption from any further tax or burden upon them during the continuance of their charters. They might well have been held in this case to have been stipulating for a benefit in favor of their private property, to wit, shares of stock. Having determined that the contract of purchase was a limitation on the power to impose any tax on the franchise, the judge in the next place proceeds to settle the question, that the exemption in the 11th section extended to the shares of stock owned by the stock-

36 holders. He holds that it does. He lays down as a proposition in his reasoning that "the aggregate could not be taxed without its having the same effect upon the parts that a tax on the parts would have on the whole. In this proposition, the learned judge, we think, was clearly in error—and a different doctrine now prevails in that court, as shown by the cases cited above—but he evidently puts the weight of the argument, on which to rest his conclusion, in the following statement: "That the legislature, in proposing the terms and conditions of the act, use the word "banks" with reference to the consent or acceptance of the act being given by the stockholders

37 according to a fundamental article of their charters. The acceptance of these terms could only be by the stockholders. They did accept, and the State recognized it as the act of the stockholders. It could not have been given in any other way. True it is, when accepted and recognized, it became a contract with the banks. But its becoming a contract with the banks determines nothing. We must look in what character or by whose assent it was to become a contract with the State, to ascertain the intention of the legislature in making the pledge "that upon any of the aforesaid banks accepting, &c., the faith of the State is pledged not to impose any further tax or burden upon

38 them." By this process of reasoning on these facts he concludes substantially that as the terms were accepted by the shockholders, the contract was made with them; therefore the intention of the legislature was, and the meaning of the contract held to be, an exemption of the property of the stockholder in the shares of stock owned by him. Such he says was manifestly the intention of the legislature from their language, and confirmed by the attending circumstances, one of which he states to be "that it was natural that the stockholders, knowing as they did that a tax upon the franchise of the banks would not exempt them from other taxation, stipulated in both instances that a provision should be introduced into the acts surrendering the State's right

39 to tax them further than they were about to be by the acts in

question. The state of the case in the charters before us is simply this: Certain persons wishing to establish a bank or insurance company, as the case may be, procure a bill to be introduced into the legislature, by which they and their associates and successors are created a body politic and corporate, under the corporate name chosen. The capital stock is limited to a certain amount generally, and divided into shares of from ten, perhaps, to one hundred dollars each; that, when so much of this capital is paid in, the stockholders may meet and elect directors, and the directors a president and other officers, 40 and make by-laws. After providing for the character of business to be done by the corporate body thus created and other matters of detail, it is provided (as in the Bluff City Insurance Co., the substance of whose act of incorporation we have followed in the above summary) "that said company shall pay the State an annual tax of one-half of one per cent. on each share of the capital stock subscribed, or, in others, capital stock paid in, which shall be in lieu of all other taxes. Here is no bona fide and real purchase for a consideration actuall' paid or agreed to be paid. It is simply an amount fixed to be paid by the corporate body thus created as an annual tax. The contract, so far 41 as it is one, is alone with the corporation thus created, the corporate body alone being party to it. No stockholders are in existence at the time; they cannot, therefore, as in the case of the Maryland banks, be held to be stipulating for benefits or exemptions in favor of the shares of stock owned by them. The corporate body alone is stipulating as to a burden imposed on it, call it by a legal fiction a purchase; the body is but stipulating for the purchase of the franchise, and to acquire property in the form of capital stock, and perhaps other property necessary to carry on the business in which the company 42 is to engage. That franchise, it must be assumed, is well known to be a property subject to the burdens of taxation as other property owned by individuals. This owned by the legal entity known as a corporation, as it owns other property. The terms of the contract then mean, that as to this property thus assumed to be purchased, we stipulate for a tax on it of only one-half of *only one-half of* one per cent. on each share of capital stock subscribed or paid in, which shall be in lieu of all other taxes on the property; that is the franchise or privilege, and everything necessary to its enjoyment, including the use of the capital stock for the purposes of the grant, and in 43 case of banks and like institutions, the banking-house and other property necessary for the carrying on the business. In other words, the legislature in granting the franchise with its incidents, taxes the thing granted at one-half of one per cent. on each share of capital stock, to which the corporation assents by accepting the charter, and binds the State (assuming the power in the legislature to tax in this way property, a question we do not decide here) not to impose any further tax on this thing granted by the language, "which shall be in lieu of all other taxes." That is, which tax of one-half of one per cent. shall be in lieu of and substituted for all other taxes on what 44 is granted and is agreed to be paid on said shares of capital stock, not by the shareholders but by the company. If it be said the payment of the one-half of one per cent. excluded the right to tax the franchise thus granted, and therefore the stipulation against other taxation was unnecessary, we answer that in this view it is only to put this effect into the form of an express stipulation, and not leave it to be deduced as a legal result. In other words, this assumed legal effect is made definite by express terms used in the act. This was what was intended as we have

no question, at any rate is the fair legal construction, in view of the principle that nothing is to be included in such a grant as against
45 the State, except what is expressly and unmistakably contracted for and clearly expressed. The simple question real'y is, whether a contract in express terms between the State and the corporate individual, to exempt the property of the corporation, shall, by construction, extend to and exempt the property of that other individual, the stockholder—property created even after the corporate contract. It can only be so held on the principle of the most extended and liberal construction of the language of the exemption; and we are bound to apply the very opposite rule in this case. To hold that the stockholder
46 is stipulating here for an exemption of his shares of stock is not, in the language of Judge Wayne in the case of Gordon, "to make the relative as broad as the antecedent," but to enlarge it and make it br'ader, and to include within it, not the parties contracting with reference to their property then being contracted for, (by construction of law,) but other property to be created in the future, having no existence at the time of the contract, and that the property of another individual, to wit, a stockholder. This construction indicated will give full effect to the language of the clauses in question, and accords with the settled doctrine that the relinquishment of the power of taxation over any
47 species of property is never to be presumed. In the language of Chief-Justice Marshall, "as the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon does not appear." (Providence Bank vs. Billings, 4th Peters R., 174, C. Ed.) A fuller expression of the same principle is given by Taney, Ch. J., in the case of the Ohio Life Ins. & Trust Co. vs. Debolt, 16th Howard, 238, C. Ed. "The rule of construction," he says, "in cases of this kind has been well settled by this court. The grant of privileges and exemptions to a corporation *are* strictly
48 construed against the corporation and in favor of the public. Nothing passes but what is granted in clear and explicit terms. And neither the right of taxation, nor any other power of sovereignty which the community have an interest in preserving undiminished, will be held by the court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken." He then adds as considerations of much weight, with which we are all familiar: "Nor does the rule rest merely on the authority of adjudged cases. It is founded in principles of justice, and necessary for the safety and well-being of every State in the Union. For it is a matter of public history, which this court cannot refuse to
49 notice, that almost every bill for the incorporation of banking companies, insurance & trust companies, railroad companies, or other corporations is drawn originally by the parties who are personally interested in obtaining the charters, and that they are often passed by the legislature in the last days of its session, when, from the nature of our political institutions, the business is unavoidably transacted in a hurried manner, and it is impossible that any member can deliberately examine every provision in every bill upon which he is called to act." In view of these well-settled principles and well-known considerations, we think the construction we have given these clauses, taken in
50 connection with the facts surrounding the grant, though strict, is sound, and carries out the intention of the legislature in their enactment. It would have been very easy to have made the purpose of the legislature clear to exempt the shares of stock, had such been the

purpose, by saying, as the legislature of Ohio did, in the 60th section of her banking law, "that the tax should be in lieu of all taxes to which said companies or the stockholders thereof would otherwise be subject." This language would have been explicit, too plain to be misunderstood or admit of any doubt as to the meaning intended to be expressed.

We are aware of the argument, made against this view, and feel
51 their force, but on the construction of the language, in connection with the surrounding and attendant circumstances, we do not think it conclusive. It is said that the agreement to pay the one-half of one per cent. annually on each share of the stock by the company exempted their franchise as property from taxation, and therefore the language, "in lieu of all other taxes," would be inoperative, unless we apply it to shield the shares of stock in the hands of the stockholders. We do not think this is, as we have said, a conclusive answer to the view we have given. The meaning of this language is, as we construe it, that the company agree to pay, and the State to accept, an annual fixed tax of one-half of one per cent. on each
52 share of capital stock subscribed or paid in, and this fixed sum is agreed to be paid and accepted by the State in lieu of—that is, as a substitute for—the variable taxes that may in the future be assessed and laid on the property which the company is receiving from the State or may acquire in the enjoyment of its franchise. It is not in terms, like the Maryland act, a pledge "not to impose any other tax or burden," but only a statement that this burden or tax agreed on is to be in lieu of or instead of any other to be paid by the company on what was granted the company by the State. The one is a pledge against any other tax or burden whatever to be imposed by the State—a contract made with stockholders owning stock at the time; the other only expresses the idea that what is imposed on the com-
53 pany is a substitute for any other tax to be imposed on the article, property, or privilege, which has been agreed to be taxed the fixed sum agreed on. The one-half of one per cent. to be paid by the company, in a word, stands as a tax to be paid by said company on its capital stock, in lieu of all other taxes, and as a protection from such on the same property, the company paying this and nothing more on the property on which it is charged; as said before, it but puts in express terms what otherwise would be a legal inference or conclusion. It has been urged that the stockholders became parties to the contract, and entitled to the exemption by subscribing for the stock in the company.
54 We hold that the contract was complete when the act was passed as between the parties to it, the State and the company. The franchise was granted. The after organization of the company was but the means by which it was to be used for the purposes of the grant. The stockholders but purchased stock in a company, which company had a contract for exemption of its capital stock and franchise from all taxes, except one-half of one per cent. on each share, not liable to be increased or diminished by State policy or exigency, so that so far as the State burden on the corporation in whose stock he invested was concerned, he knew how to estimate it, but as to his personal property in the share of stock there was no contract of exemption, but the consti-
55 tution had provided it might be taxed, and had imperatively required that, if taxed, it should be taxed according to its value, as other property. We do not think proper to go again into a citation and review of *of* the decisions of our various sister States, in construing clauses more or less like the ones under consideration in charters. We but say, that while we habitually look to these decisions with much

respect, differ with many of them with great diffidence, yet we cannot do more in our position than deem them highly persuasive evidence of what the law is. We cannot without sacrificing the independence of our own judgments permit them to be conclusive and authorita-
56 tively binding on us, where our judgments do not approve their reasonings or conclusions. This effect can only be given to decisions of our own court, subject, however, to be overruled even as to them, after taking into proper consideration the weight of the reasoning, the influence proper to be given to the doctrine of stare decisis, and such other well-known considerations as are and have been long recognized and settled in our jurisprudence, as bearing upon the question of the propriety of overruling a deliberate decision made by the highest tribunal of the State. We need scarcely add that, as a matter of course, on questions of Federal jurisprudence, we recognize distinctly the controlling authority of the Supreme Court of the United States.

57 We announce the foregoing conclusion more readily because we have the satisfaction of knowing that if we have erred no permanent injustice will be done, as the subject is one that may be reviewed by the Supreme Court of the United States, having the power under the Constitution to settle conclusively the question, which we desire may be done. Decree will be drawn in accordance with this opinion in all the cases pending dependent on the question herein disposed of.

FREEMAN, J.

McFarland and Turney, J's, dissent.

58 *Dissenting opinion.*

THE STATE, COUNTY OF SHELBY, & CITY OF Memphis, *vs.* STOCKHOLDERS IN VARIOUS BANKS AND INSURANCE COMPANIES IN MEMPHIS. } Several cases.

These several cases present substantially the same questions.

The shares of the several defendants in various banks and other corporations were assessed for taxation at their value, and included in the valuation of the personal property of each defendant, and the tax levied under the general tax-laws sought to be collected accordingly; this conceded to be in accordance with the act of 1st March, 1869, and subsequent laws. The collection of the taxes thus imposed
59 is resisted upon the ground that the laws imposing the tax are in conflict with the provisions of the charters of the several corporations, and that these provisions of the charters are protected from such legislation by section 10, art. 1, of the Constitution of the United States, by which States are prohibited from passing laws impairing the obligation of contracts. The charter of one of the banks contains this provision: "That said company shall pay to the State an annual tax of one-half of one per cent., which shall be in lieu of all other taxes." The others contain substantially similar provisions. The charters were granted previous to 1st March, 1869. The act of that date it is
60 assumed repeals the above provisions of the charters and substitutes the tax now sought to be collected from the several share-holders. The questions to be decided may be stated as follows:

1st. Is the provision of the charter above set forth an ordinary exercise of the taxing power by the legislature, and therefore a law re-

pealable at the will of the legislature, or is it when accepted a contract in the sense of section 10, art. 1, of the Constitution, which cannot be impaired?

2nd. If a contract in the sense indicated, did the legislature, under the constitution then in force, possess the power to bind the State?

3d. If a contract, and one which the legislature might make,
61 was it intended by a fair construction to exempt the stockholders from the tax now sought to be imposed upon them?

Upon the first question it has been authoritatively settled that the charter of a private corporation is a contract between the Government and the corporators, and whatever stipulation it contains regarding taxation of the corporate franchises or property are irrepealable, unless the right to alter or repeal the provisions of the charter are reserved. This doctrine, as often as it has been announced, has been earnestly and strongly resisted, and especially when so applied as to allow the legislative branch of the Government to barter away the future right of taxation, it does appear that it is subject to strong objections, inasmuch as it may be exercised to the subversion of the Government
62 itself, and it may be, if the question was an open one, the courts would hesitate long before establishing it; but inasmuch as the legislature of a State possesses all legislative power not expressly denied, it is no sufficient objection to the existence of the power that it may be exercised to the detriment of the people, or the endangering of the Government itself. This is true of many powers conceded to exist in the legislature, and against which the only remedy is the power and influence of the people over their representatives. It is the province of the Supreme Court of the United States to secure the citizens against the infraction of sec. 10 of art. 1 of the Federal Constitution. The passage
63 by the States of laws impairing the obligation of contracts, and we have from this court a weight of authority that is uniform and irresistable, that a charter of this character is a contract when accepted, and cannot be repealed without consent where the power to do so is not reserved, and that the provisions of such charters in regard to taxation or exemption from taxation or the paying of bonus in lieu of taxation, are as much protected as other portions of the charter. (See Bank of Ohio vs. Knoop, 16 Howard, 369; Dodge vs. Woolsey, 18 Howard, 381; 8 Wallace, 430; Gordon vs. Appeal Tax Court, 3 Howard, and many other cases.)

The next question is, was the power of the legislature of this State under the constiution of 1834, in this respect, limited?

64 Does the constitution contain any restriction upon the power of the legislature to grant charters with provisions like the one in question? The clause bearing upon the question is sec. 28, art. 2, as follows: "All lands liable to taxation held by deed, grant, or entry, town-lots, bank-stock, slaves between the age of twelve and fifty years, and such other property as the legislature may from time to time deem expedient, shall be taxable. All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that the same shall be equal and uniform throughout the State. No one species of property from which tax may be collected shall be taxed higher than any other species of property of equal
65 value, but the legislature shall have power to tax merchants, pedlars, and privileges in such manner as they may from time to time direct." Another clause of the constitution against special privileges contains a proviso, that the legislature may grant such charters of incorporation as they may deem expedient for the public good.

But I take it to be clear that in granting charters of incorporation no power or privilege could be given in direct violation of other portions of the Constitution. Therefore the question is, is the clause of the charter under consideration (as to the tax) in conflict with sec. 28 of art. 2, above set forth, regarding the clause of the charter as a part of the general tax-law? and disconnected from the charter, that it
66 is in conflict with the above clause of the Constitution admits of no doubt. It fixes an arbitrary tax upon each share without regard to the rate then fixed or to be afterwards fixed by the general laws as to other property. Regarding it, however, as a contract by which the State parts with the right to tax in the future, in consideration of the sum agreed to be paid, the question is, Does the Constitution, in the clause quoted, prohibit the legislature from making such contract? I think it clear that the legislature by this clause is not absolutely required to tax all property of the species enumerated, but the several species of property enumerated, together with such other as the legislature might deem expedient, was made taxable; that is
67 subject to taxation. But the legislature might omit to tax or exempt such property as deemed expedient for the public good. As supporting this view, it may be stated that this construction has been uniformly adopted by the legislative department—every legislature, which has been in session under this constitution, has granted exemptions to a greater or less extent. And this has been acquiesced in by the other departments of the government. The convention of 1870 must have so understood it, for the clause in question was changed, and it was provided in lieu, that "all property, real, personal, or mixed, shall be taxed," and the extent of the legislative power to grant
68 exemptions is limited. But it is argued, that conceding the power of the legislature to exempt property, still, when that body selects property for taxation, it must all be taxed equally and according to its value; that there can be no partial exemption. It is true that the above clause of the constitution might be practically abrogated if we concede to the legislature the power to make arbitrary partial exemptions. The law in its general terms might follow the provision of the constitution referred to, that is, an equal rate of tax might be levied upon the different species of property, to be assessed according to the value of the property, but this might be followed by such arbitrary partial exemptions as to entirely defeat the uniformity and equality provided for.
69 And I conclude that if this had been attempted by the legislature by a law as distinguished from a contract, that it would probably violate the above clause of the constitution. But does this clause of the constitution forbid the legislature from contracting in a charter to receive a bonus or fixed sum in lieu of the right to levy future taxes? We have seen that by the overwhelming weight of authority the power undoubtedly existed in the legislature unless specially limited in the constitution. To understand the meaning of this clause of the constitution of 1834 we must refer to the previous constitution of 1796 to see the defect intended to be remedied. By the constitution of 1796
70 taxes were levied without regard to the value of the property; no one hundred acres of land was to be taxed higher than another, except town lots, which were not to be taxed higher than one hundred acres, and no slave higher than two hundred acres. So that while the rate of taxes might be uniform, the different values of the property would render the taxes wholly unequal. The clause of the constitution of 1834 was intended principally to meet this objection. There is nothing however to show that this clause was intended to take

away the power previously existing in the legislature to contract by a charter upon a consideration deemed adequate to release the power of taxation. The legislature might be of opinion that the building of
71 a railroad or some similar enterprise would greatly add to the general prosperity of a State, and to accomplish this purpose incorporate a company, and as an inducement to capitalists to invest their money, grant a total or partial exemption from taxation, or agree to receive a fixed sum in lieu thereof. It is easy to see the difference between this and the general taxation of property without regard to its value, allowed under the constitution of 1796, and prohibited under the constitution of 1834. It should be borne in mind also that the power to grant charters with such exemptions was frequently exercised under the constitution of 1796, and, with this fact before the convention of 1834,
72 the failure of that body to embody in the constitution of 1834 any positive restriction of the legislature in this regard must be taken as almost conclusive of the question. I conclude, therefore, that this provision of the constitution was not intended to limit the power of the legislature as to contracts of this character. The contemporaneous construction given to this constitution by the first legislature that sat under it, in 1835, composed in part of many of the members of the convention and other able lawyers, and the construction given probably by every legislature in the State, during the time the constitution was in force, acquiesced in as it has been by the other departments of the government must necessarily have great weight, if it is
73 not absolutely irresistable on this question. (Stewart vs. Laird, 1 Cranch, 299; Martin vs. Hunter, 1 Wheaton, 351; Colins vs. Virginia, 6 Wheat., 418; 12 Wheaton, 290.)

During the entire period this constitution was in force each session of the legislature granted charters of incorporation embracing every class, many of them containing stipulations for total or partial exemptions or to receive a fixed sum in lieu of taxation. Under such charters our most important railroads and other public enterprises have been established.

The other departments of the Government have acquiesced, and the question never made before the courts. This construction must therefore be regarded as established. And I conclude that the State is bound by the terms of the charter. The question, therefore, remaining is, whether by fair construction of the clause of the charter the stock-
74 holders are released from further taxatiou. In such cases it is the settled rule of construction that every presumption is against the corporation, and that it can claim no exemption not clearly granted. As has been said, the stipulation of the charter that the company shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock subscribed, &c., is not a law for the levying and collecting a tax in accordance with the constitution. Although it is designated as an annual tax, yet it is in reality in the nature of a bonus or fixed sum, to be paid at the times stated in lieu of taxes that the legislature might otherwise assess. As said by Justice Nelson, "A round sum or
75 an annual charge, with or without reference to capital stock, may be asked by a legislature for such a franchise. It may be more convenient to the banks to have such consideration or bonus distributed through the years of their corporate existence than to pay its equivalent in advance; so that the fact that the payment is to be made annually, and is fixed by reference to the capital, stock, and is called a tax, does not change the character of the payment; it is still in the nature of a bonus or round sum to be paid by contract in lieu of taxes. It does not follow the rule as to taxation fixed by the constitution. The question then

76 is, what right of taxation was intended to be released in consideration of this bonus? A tax upon the franchise and a tax upon the property of the corporation or stockholders are entirely distinct. The stipulation for the annual payment of one-half of one per cent. upon the capital stock subscribed, without more, would have been taken as a bonus to be paid for the franchise, and would have precluded any further tax upon the franchise, but would not have precluded a tax upon the capital of the corporation or the stockholders. But it was within the power of the legislature, if deemed expedient, to further stipulate that this bonus should be received in lieu not only of taxes that might be levied upon the franchise, but also of
77 taxes that might otherwise be levied upon the capital or property of the corporation or upon the shares of the stockholders therein. The question is, has the legislature done so in this instance. The stipulation here relied upon is that the annual payment of one-half of one per cent. upon the capital subscribed "shall be in lieu of all other taxes." The argument in favor of collecting the taxes now claimed is, that this one-half per cent. was only to be paid in lieu of the tax upon the franchise. The objection to this argument is, that it would render the words "which shall be in lieu of all other taxes" without meaning.

For, as we have said, the grant of the franchise upon the general
78 payment of one-half of one per cent., without more, would have been conclusive against the right of the State to lay a further tax upon the franchise without the additional words quoted. These words must, then, have some additional meaning. "In lieu of all other taxes" evidently shows that more than one species of tax was contemplated; some other beside the tax upon the franchise. The legislature of 1869, manifestly, did not regard this as merely a bonus for the franchise or in lieu of a tax upon the franchise, for if this were so, the power would have been clear to have levied the tax now claimed in addition to this bonus; whereas the law levying the tax of 1869 assumes to repeal the tax specified in the charter; both taxes are not claimed. The most natural
79 meaning of the words would be in lieu of all other taxes that might otherwise be levied. It is next argued that, at most, this could only mean all other taxes that might otherwise be levied upon the capital stock of the corporation, or upon the corporation in respect of its capital or property, but could not be construed to release the stockholders in respect to their shares of stock in the corporation. Beyond doubt there is a clear distinction between the capital stock and stock in the corporation. The capital stock belongs to the corporation; the stock of the stockholders is their individual personal right or property and may be sold and transferred at pleasure. In contemplation of law
80 they are certainly separate and distinct property, and they are certainly each the subjects of taxation and a contract that the one shall be released from taxation does not necessarily imply that the other shall be. This is a question to be determined upon a construction of the entire contract. On the other hand, while in one sense the distinction referred to is clear, it is equally true that the actual fund or mon'y, or that which represents it, is the same. The capital paid in is the property of the corporation. The share of the stockholder is his right or interest in the corporation in proportion to his shares of stock subscribed and paid; the benefit he is to actually receive results either from a sale of his shares in the market or the receipt of his share of the dividends
81 or profits as they may be declared and paid during the progress of the business, and the division of what may remain upon dissolution. Upon the payment by a stockholder of $100 into the capital

stock the corporation becomes the owner of the money and the stockholder the owner of a share or shares representing the $100, and all actual benefit must grow out of this; so that while these separate properties or rights may be severally and independently dealt with or taxed, yet the actual beneficial interest of the individual stockholder is affected to precisely the same extent by a tax upon the capital or effects of the corporation that he would be by a proportionate tax upon his
82 share of stock. The value of his beneficial interest is diminished to the same extent, whether the tax be taken out of the aggregate fund or his proportion of the tax be taken out of the value of his share. Therefore it would result that a stipulation in a charter that the capital or effects of the corporation shall be exempt, leaving unaffected the right of the law-making power to levy a tax upon the shares of the several stockholders, would be a contract of but little, if any, practical benefit to the owners of the stock, provided the right to tax the shares of the stockholders be exercised; still, if such be the terms of the charter, it must prevail. No further exemption can be claimed than
83 is expressly stipulated. But it is important to bear in mind that the effect of the tax is the same in determining the meaning of the words used in the charter. In construing a charter to be a contract, who are the contracting parties; I think the State upon one side and the subscribers of stock on the other. The charter proposes the terms, and when this is accepted by the stock being subscribed and the corporation organized, the contract is complete. (See the reasoning of Judge Wayne in Gordon vs. The Appeal Tax Court, 3 Howard, 147.) It can not ordinarily alter the meaning that the stipulation of the charter is in terms with the bank or corporation in its corporate name. A charter or an amendment can only be accepted by the individuals who
84 subscribed the stock or the stockholders. It is agreed that the contract is with the corporation in its corporate capacity, and the stipulation for exemption from all other taxes is only made in favor of the corporation, and can only extend to the exemption of the corporate property, and not for the exemption in favor of the stockholders; but it seems to me that this is a strained construction. The corporate existence is only complete upon the organization, and can make no contract before this; but this is after the stock is subscribed and paid, and the contract is complete upon the acceptance of the charter. In the present case, the stockholders subscribed and paid their stock and organized the corporation upon the faith of the stipulation in the charter that the annual payment of one-half of one
85 per cent. upon the capital subscribed was to be in lieu of all other taxes," what did they understand by this? What had they a right to understand? Certainly something more than that this was to be in lieu of the tax upon the franchise and the tax upon the capital of the corporation. This latter stipulation, as we have seen, would be of no practicable benefit, if tax upon the stockholders is, substituted in the place of a tax upon the capital. The language is, "in lieu of all other taxes." It does not specify taxes to be levied against the corporation or the stockholders, but is in general terms. We must take it that this proposition is made to persons about to subscribe stock
86 in the corporation, and I think it must be taken to mean all other taxes upon the capital or aggregate fund of the corporation, or that which to the stockholders would be the same in effect, a tax upon their shares. I am of opinion that the weight of authority favors this view of the question, and taking as settled the principles adjudged by the Supreme Court of the United States on questions of this char-

acter, the result is as stated. See the cases of Gordon vs. The Appeal Tax Court, 3 Howard, 133; State Bank of Ohio vs. Knoop, 16 Howard, 369; Dodge vs. Woolsey, 18 Howard, 331; Jefferson Bank vs. Skelly, 1 Black, 439. The doctrine and the reasoning of the first-named case bears strongly upon the present case. The authority of that case, though strongly assailed, seems not to have been overthrown. The cases which hold that the shares of stockholders in the national banks may be taxed are not in conflict with this view. The shareholders in national banks resisted the tax upon the ground that the capital of the banks was invested in United States bonds, which the laws authorizing their issuance exempted from taxation. This, it was argued, necessarily exempted the stockholders upon the principle that the tax was the same. But the act of Congress under which the national banks were organized contains an express proviso that nothing in the act should be construed to prevent the shares of stock being included in the personal property of the owners for taxation under State authority, with certain restrictions, intended to prevent unjust discrimination against such stock. Persons accepting the benefits of franchise granted by this act, could not complain of a tax authorized by the act itself. They could claim no contract against this. While they held the bonds they were not subject to taxation; but if they became the capital stock of a bank under this act, the stockholders made the investment with full notice from the act itself that his shares would be subject to State taxation. (See Van Allen vs. The Assessors, 3 Wallace; People vs. Commissioners, 4 Wallace, 244; Landberger vs. Rouse, 9 Wallace, 468.) When corporations have been fostered by the Government, and grown rich and powerful, the exemption of property owned by them from taxation, thus throwing the burdens upon the remaining tax-payers, is apparently unjust and oppressive, but when the charters were granted in many instances, especially in the case of our railroads, it was thought it would be a great public benefit to have the charters accepted and the enterprises carried through, and as an inducement to capatalists to invest their money the partial exemptions from taxation were made stipulations in the charters. Whether the public have realized the full benefits anticipated in every instance we need not enquire. So long as these charters are held to be contracts we must stand by their terms, according to their intent and meaning; we may construe them most strongly against the exemptions, but in doing this we should be careful not to evade the fair import and meaning of the terms by strained or unnatural construction.

With great respect, therefore, for the majority, I am constrained to dissent from the opinion announced by Judge Freeman.

McFARLAND.

I am authorized to say that my brother, Turney, concurs with me.

McFARLAND, *J.*

And on Monday, November 20th, one of the days of the September term, 1876, of said supreme court, the following decree was pronounced in this cause, to wit:

THE STATE OF TENNESSEE & COUNTY OF Shelby
vs.
WM. M. FARRINGTON & THE UNION & PLANTERS' BANK OF MEMPHIS.

} # 212. Shelby chy. docket.

This cause was heard upon the transcript of the record from

the second chancery court of Shelby County, and after argument by counsel and full consideration by the court, it appearing that there is manifest error therein, it is therefore ordered, adjudged, and decreed by the court that the decree of said chancery court be reversed, vacated, and annulled.

And upon consideration of the claim made by defendant, that the revenue act of the Tennessee legislature of 1869–'70, chapter 81, section 1, providing "that all shares of stock in any bank, corporation, or company, now or hereafter incorporated by or in pursuance to any law of this State, or any other State, and all public bonds or stocks,
92 except United States bonds, which by the laws of the United States are expressly exempt from taxation, shall be valued and assessed and subject to taxation," under and by virtue of which act the defendant Wm. M. Farrington's shares of stock in the Union and Planters' Bank of Memphis were assessed for State and county taxes, impaired the obligation of the contract of exemption from taxation contained in the charter of the said Union & Planters' Bank of Memphis, and violated section 10, article 1, of the Constitution of the United States, this court doth adjudge and decide this point and claim against the defendant, on the ground that the shares of stock in said bank are not the property or thing exempted by the charter of said bank, but other and different, and so not within the protection of the said
93 charter and of said section of the Constitution of the United States.

It is therefore further ordered, adjudged, and decreed by the court, that the sum of $60.00 State tax and $180.00 county tax were properly assessed by the State of Tennessee and the county of Shelby, as State and county taxes for the year 1872, upon the shares of stock of the defendant, William M. Farrington, in the Union and Planters' Bank, of Memphis, and therefore that the State of Tennessee do recover of the said Farrington and of said bank as his surety the said sum of $60.00 State tax, and that the county of Shelby do also recover of said Farrington, and said bank as his surety, the said sum of $180.00, county tax, for all which execution may issue, and that both of said sums
94 bear interest at the rate of six per cent. per annum from the first day of January, 1873, until paid.

It is further ordered, adjudged, and decreed that the State of Tennessee and the county of Shelby recover of said defendant Farrington, and said Union & Planters' bank as surety, the costs of this cause in this court and the court below, for which execution may issue.

Petition for writ of error.

To the Hon. Jas. W. Deaderick, chief-justice of the supreme court of the State of Tennessee:

The petition of William M. Farrington against the State of Tennessee and Shelby County.

95 Petitioner respectfully represents unto your honor that lately there was pending in the supreme court of Tennessee, at Jackson, a cause wherein the State of Tennessee and Shelby County were complainants and petitioner was defendant, in which a final decree was rendered in said supreme court by the judgment thereof at the September term, 1876, against your petitioner, the defendant, and in favor of the complainants respectively in said causes. Petitioner further represents to your honor that in the record, proceeding, and judgment in

said cause there was drawn in question one of the matters embraced in section 709 of the Revised Statutes of the United States, i. e., there
96 was drawn in question in said cause the validity of a statute of the State of Tennessee, on the ground of its being repugnant to the Constitution of the United States, and the decision of the said supreme court and the judgment thereof was in favor of the validity of said statute.

Your petitioner is advised by counsel that he is entitled to have said judgment and decree of the said supreme court reviewed in the Supreme Court of the United States. To the end, therefore, that your petitioner may remove said cause into the Supreme Court of the United States, he prays your honor to endorse hereon an allowance of a writ of error, and that your honor will sign the proper citation in said cause, in order that
97 your petitioner may have said cause removed, and that the error, if any hath been, shall be duly corrected and full and speedy justice done to the parties. And your petitioner, as in duty bound, will ever pray, &c.

ESTIS, JACKSON & ELLETT,
HARRIS, McKISSICK & TURLEY,
Sols. for William M. Farrington.

Supreme court of the State of Tennessee, at Jackson, Nov. , 1876.

The writ of error and citation prayed for in the foregoing petition are granted and allowed, pursuant to law in such cases. The plaintiff in error will execute a good bond in the sum of one thousand dollars, to be approved when presented to me.

JAS. W. DEADERICK, *C. J.*

(Endorsed:) Filed Nov. 29th, 1876. Jno. H. Freeman, clk., by S. D. Hays, D. C.

98 *Bond.*

Supreme Court of the United States.

STATE OF TENNESSEE & COUNTY OF SHELBY
vs.
WILLIAM M. FARRINGTON.

Know all men by these presents that we, William M. Farrington, as principal, and Charles W. Goyer and Henry B. Howell, as sureties, are held and firmly bound unto the State of Tennessee and to the County of Shelby in the sum of one thousand dollars, to be paid to the said State of Tennessee and County of Shelby, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and
99 our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated this 25th November, 1876.

Whereas the above-named William M. Farrington hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the supreme court of the State of Tennessee, at its September term, 1876, at Jackson: Now, therefore, the condition of this obligation is such, that if the above-bound and named William M. Farrington shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

WM. M. FARRINGTON. [SEAL.]
CHARLES W. GOYER. [SEAL.]
HENRY B. HOWELL. [SEAL.]

100 I, H. E. Andrews, clerk, &c., do hereby certify that the sureties on the above bond are good and sufficient for the penalty thereof. Nov. 25, 1876.

H. E. ANDREWS,
Clerk U. S. Circuit Court, W. D. Tenn.

Approved 29 Nov., 1876.

JAS. W. DEADERICK, *C. J.*

(Endorsed:) Filed Nov. 29th, 1876. John H. Freeman, clk., by S. D. Hays, D. C.

Citation.

The United States of America to the State of Tennessee and to Shelby County, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's
101 office of the supreme court of Tennessee, at Jackson, wherein William M. Farrington is plaintiff in error and you are defendants in error, and show cause, if any there be, why the judgment and decree rendered against said plaintiff in error in the writ of error mentioned should not be coreected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable James W. Deaderick, chief-justice of the supreme court of Tennessee, this the 28th day of November, 1876.

JAS. W. DEADERICK, *C. J.*

Service of the above citation acknowledged by me on behalf of the State of Tennessee this 29th, 1876.

J. B. HEISKELL,
Att' Gen'l.

Also for county of Shelby.

JULIUS A. TAYLOR, *Atty.*

102 STATE OF TENNESSEE:

I, John H. Freeman, clerk of the supreme court of said State for the western division, at Jackson, do hereby certify that the foregoing is a full, true, and perfect transcript of the record in the case of the State of Tennessee and the County of Shelby against Wm. M. Farrington as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court at office in the city of Jackson this 15th day of January, A. D. 1877, and of the Independence of the United States the 101st year.

[SEAL.] JNO. H. FREEMAN, *Clerk.*

103 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of Tennessee, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court of Tennessee,

before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Tennessee and the County of Shelby and William M. Farrington, wherein was drawn in question the validity of a statute of the said State of Tennessee on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such its validity, a manifest error hath happened to the great damage of the said William M. Farrington, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United
104 States, together with the writ, so that you may have the same at Washington on the second Monday of October next, in the Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 27th day of November, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] H. E. ANDREWS,
Clerk U. S. Circuit Court W. D. T.

(Indorsed:) Wm. M. Farrington, plff. in error, vs. The State of Tennessee and the County of Shelby, defts. in error. Writ of error. Filed Nov. 29th, 1876. Geo. H. Greenway, clk.

(Indorsement on cover:) No. 982. William M. Farrington, plff. in error. The State of Tennessee and the County of Shelby. Tennessee supreme court. Filed 3rd February, 1877.